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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

<p>Barkley & Associates, Inc., Plaintiff, v. Quizlet, Inc., Defendants.</p>	<p>No. 2:24-cv-5964 WLH(Ex) Plaintiff Barkley's Notice and Motion to File a First Amended Complaint to Add a Claim for Copyright Infringement Based on Defendant Quizlet's Copying Barkley's Works and Using them for Quizlet's Artificial Intelligence Prod- uct; Memorandum of Points and Authorities in Support Date: March 28, 2025 Time: 1:30 p.m. Judge: Hsu</p>
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To Defendant Quizlet, Inc.:

Please take notice that on Friday, March 28, 2025, at 1:30 p.m., plaintiff Barkley & Associates, Inc. will move for leave to file the First Amended Complaint (Exhibit 1). The proposed First Amended Complaint amends the second claim for relief and adds the sixth claim for relief to add allegations that Quizlet copies Barkley's copyrighted materials or has a third party copy the materials as the source of its artificial intelligence-created teaching materials. Those acts are vicarious copyright infringement. The amended complaint also cleans up language and images from the original complaint.

Barkley only learned about Quizlet’s copying for its AI products during a January 22, 2025, deposition of Sean Marrer, Quizlet’s designated Rule 30(b)(6) witness.

Barkley files this motion following the Local Rule 7-3 conference of counsel on February 27, 2025. Counsel for Quizlet did not approve Barkley’s filing an amended complaint.

February 28, 2025

/s/ Brian Tamsut
 Brian Tamsut
 SoCal IP Law Group llp
 Attorney for Plaintiff Barkley &
 Associates, Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

During a January 22 deposition, defendant Quizlet's FED. R. CIV. P. 30(b)(6) designated witness Sean Marrer admitted that Quizlet sells guides "generated by AI" from Barkley-created works. That act is copyright infringement. Artificial intelligence (AI) is now an issue here.

AI works by loading files onto a computer and analyzing the files with AI software to answer questions users ask. To load the files, Quizlet or its agent had to infringe by copying Barkley's copyrighted materials. If Quizlet directed an agent to load and analyze the files for its AI, that is vicarious infringement because Quizlet has (1) the right and ability to supervise the infringing conduct and (2) a direct financial interest in the infringing activity. For the same reasons, Quizlet AI's users also cause Quizlet to be a vicarious infringer.

B. BACKGROUND

1. The original complaint's copyright infringement claim.

Barkley's original complaint, Dkt. 1, had five claims for relief; federal trademark infringement, copyright infringement, and three claims for related unfair competition. The second claim for relief is for copyright infringement. The complaint alleges Barkley creates test preparation materials for nurse practitioner students, and Quizlet obtained copies and made copies. Barkley owns copyrights to its materials, which it registered with the Copyright Office.

Quizlet posts Barkley's materials on Quizlet's website so that website users can download the materials. Quizlet's acts are direct copyright infringement. The parties' dispute whether the DMCA safe harbor, 17 U.S.C. § 512, excuses Quizlet's sale and posting of Barkley's infringing

1 materials, but the dispute will be the subject of a summary judgment mo-
2 tion that Quizlet plans to file.

3 **2. The proposed additions to the amended complaint.**

4 The amended complaint has two proposed amendments, all in the
5 second claim and the new sixth claim. The amended second claim alleges
6 Quizlet directly infringes through its copying or arranging with an agent
7 to copy Barkley's copyrighted works to load Quizlet+ AI, Quizlet's AI prod-
8 uct.

9 The sixth claim alleges Quizlet's vicarious copyright infringement
10 through (1) directing an agent to use Barkley's material to train
11 Quizlet+ AI and (2) making Quizlet+ AI available to its users.

12 Tamsut Declaration Exhibit 3 is a Microsoft Word-created compari-
13 son of the proposed amended complaint to the original complaint. It shows
14 no formatting changes, however.

15 The DMCA safe harbor does not affect Quizlet's AI-related infringe-
16 ments.

17 **3. Quizlet uses Barkley's copyrighted materials to train its Quizlet+ AI**
18 **generated study features.**

19 Sean Marrer was Quizlet's designated FED. R. CIV. P. 30(b)(6) wit-
20 ness.¹ Mr. Marrer testified about Quizlet's study features:

21 Q. When you say "study features," what do you mean?

22 A. I mean our study – I say study features. I say that syn-
23 onymously with study tools or you'll sometimes see them called
24 study modes on the Quizlet website or mobile app. You'll see

25
26
27 ¹ Ex. 2, p. 16, lines 9–12 ("Q. Were you designated by Quizlet, Inc. to give
28 testimony regarding the DMCA in this case today? A. I have been desig-
nated to appear here today by Quizlet.")

1 flashcards, learn, test, blast. These are different activities and
2 features that a user can use independently or the teachers
3 might leverage in the classroom setting.

4 * * *

5 Q. Is that user generated, the summaries that Quizlet dis-
6 plays when it displays a study guide?

7 A. In a study guide, no. The summaries are not user gener-
8 ated.

9 Q. How were they generated?

10 MR. BIALEK: Objection.

11 THE WITNESS: My understanding is that the summaries
12 are – are generated by AI.

13 Ex 2, p. 116, lines 7–16.

14 **C. ARGUMENT**

15 **1. Leave to amend a complaint should be given freely here because no**
16 ***Foman* factors arguing against leave apply.**

17 At this stage, Barkley “may amend its pleading only with Quizlet’s
18 written consent, to which Quizlet did not consent, or the court’s leave. The
19 court “should freely give leave when justice so requires” so the party is “af-
20 forded an opportunity to test his claim on the merits.” *Foman v. Davis*,
21 371 U.S. 178, 182 (1962) (commenting on FED. R. CIV. P. 15(a)). *Foman*
22 also discusses factors courts can use to deny leave to amend including:
23 “undue delay, bad faith or dilatory motive on the part of the movant, re-
24 peated failure to cure deficiencies by amendments previously allowed un-
25 due prejudice to the opposing party by virtue of allowance of the amend-
26 ment, futility of amendment, etc.” *Id.* See also *Eminence Capital, LLC v.*
27 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (“Absent prejudice, or a
28

1 strong showing of any of the remaining *Foman* factors, there exists a pre-
2 sumption under Rule 15(a) in favor of granting leave to amend.”)

3 **a. Barkley did not unduly delay.**

4 Barkley only learned about Quizlet’s AI infringement during
5 Quizlet’s January 22, 2025, Rule 30(b)(6) deposition. Its counsel only re-
6 ceived the deposition transcript February 5, and the parties’ attorney did
7 not meet and confer until February 27. Tamsut Decl. ¶ 3.

8 **b. Barkley engaged in no bad faith or dilatory motives.**

9 It acted promptly after the January 22 deposition to file this motion.

10 **c. The amended complaint is not presented to correct repeated fail-
11 ure to cure deficiencies.**

12 This amendment does not respond to any earlier dismissals.

13 **d. Quizlet will suffer no undue prejudice because of the amendment.**

14 The lawsuit is still at an early stage. The Court set no trial date but
15 has scheduled a March 24 hearing on Quizlet’s proposed summary judg-
16 ment motion. Dkt. 52.

17 **e. The amendment is not futile.**

18 As Barkley’s arguments about the proposed amended complaint
19 show, the law supports its claim.

20 **2. How does AI work?**

21 *Tremblay v. OpenAI, Inc.*, 716 F. Supp. 3d 772, 776 (N.D. Cal. 2024),
22 described how ChatGPT, an AI program, works. The discussion here sum-
23 marizes the explanation. Defendant OpenAI sells large language models
24 (or “LLM”) AI software. These language models are “trained” by inputting
25 large amounts of texts known as the “training dataset.” The language
26 models copy text from the training dataset and extract “expressive infor-
27 mation.” ChatGPT, OpenAI language model, lets users enter text prompts
28

1 to which ChatGPT will respond and “simulate human reasoning,” includ-
2 ing answering questions or summarizing books. ChatGPT generates its
3 output based on “patterns and connections” from the training data.

4 **3. Using copyrighted works to “train” AI infringes copyrights of the**
5 **text inputted into the AI’s computer program.**

6 Copyright law relating to AI is evolving. *Andersen v. Stability AI*
7 *Ltd.*, 700 F. Supp. 3d 853, 864 (N.D. Cal. 2023), is an example of a recent
8 case. There, plaintiff sued defendant Stability for direct copyright in-
9 fringement based on Stability’s:

10 creation and use of “Training Images” scraped from the inter-
11 net into the LAION datasets and then used to train Stable Dif-
12 fusion. Plaintiffs have adequately alleged direct infringement
13 based on the allegations that Stability “downloaded or other-
14 wise acquired copies of billions of copyrighted images without
15 permission to create Stable Diffusion,” and used those images
16 (called “Training Images”) to train Stable Diffusion and caused
17 those “images to be stored at and incorporated into Stable Dif-
18 fusion as compressed copies.”

19 *Id.* at 864. Stability did not challenge that its acts quoted above, if proved,
20 support plaintiff’s direct copyright infringement claims, so the court de-
21 nied the motion to dismiss them. Quizlet’s acts alleged in the amended
22 complaint are the equivalent of those alleged in *Stability*.

23 **4. The amended complaint alleges Quizlet’s AI system infringes Bar-**
24 **kley’s copyright.**

25 The amended complaint alleges Quizlet or a person or company
26 Quizlet directed copied Barkley’s copyrighted works to train its
27 Quizlet+ AI product. Amend. Comp. ¶ 106. If Quizlet copied Barkley’s
28 products, Quizlet is a direct infringer. *Id.* ¶ 49. If Quizlet directed another

1 to copy the products for Quizlet to use in its AI product and paid for the
2 work, Quizlet is a vicarious infringer.

3 **D. CONCLUSION**

4 Barkley showed the amended complaint's statement about Quizlet's
5 actions surrounding its Quizlet AI product alleges an effective copyright
6 infringement claim. Barkley requests the Court grant this motion and ap-
7 prove filing of the amended complaint.

8
9 February 28, 2025

/s/ Brian Tamsut

Brian Tamsut

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Associates, Inc.